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Attorneys for Plaintiff Brave New Films 501(c)(4)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL SAVAGE,
Plaintiff,
v.

COUNCIL ON AMERICAN-ISLAMIC
RELATIONS, INC., COUNCIL ON
AMERICAN ISLAMIC RELATIONS ACTION
NETWORK, INC., COUNCIL ON AMERICAN
ISLAMIC RELATIONS OF SANTA CLARA,
INC., and DOES 3-100,
Defendants.

No. C 07-6076-SI

**DECLARATION OF SHEILA M.
PIERCE IN SUPPORT OF BRAVE
NEW FILMS' ADMINISTRATIVE
MOTION TO CONSIDER
WHETHER CASES SHOULD BE
RELATED PURSUANT TO L.R. 3-12;
L.R. 7-11**

1 I, Sheila M. Pierce, declare:

2 1. I am an attorney duly admitted to practice before this Court, and am an associate
3 at Bingham McCutchen, LLP, Counsel for Brave New Films 501 (c) (4). This declaration is
4 submitted in support of Brave New Films' ADMINISTRATIVE MOTION TO CONSIDER
5 WHETHER CASES SHOULD BE RELATED PURSUANT TO L.R. 3-12; L.R. 7-11. If called
6 as a witness I would and could testify to the following:

7 2. According to the records of the United States Copyright Office, and according to
8 Savage himself, Savage is the registered copyright owner of the October 29, 2007 radio
9 broadcast of "The Michael Savage Show." Attached hereto as Exhibit A is a true and correct
10 copy of Savage's copyright registration for the October 29, 2007 broadcast.

11 3. On January 18, 2008, Brave New Films created and uploaded to its YouTube
12 channel a video, "Michael Savage Hates Muslims" ("the Video"), which was posted to YouTube
13 at the URL <http://www.youtube.com/watch?v=CtY-JWahHQs>.

14 4. The Video used audio excerpts from Savage's October 29, 2007 broadcast to
15 criticize Savage's anti-Muslim message.

16 5. On September 29, 2008, counsel for Original Talk Radio Network ("OTRN"), the
17 company that syndicates and broadcasts "The Michael Savage Show," delivered a letter by
18 facsimile to YouTube's "DMCA Complaints" department, demanding the removal of the Video.
19 Attached hereto as Exhibit B is a true and correct copy of that letter.

20 6. YouTube treated this letter as a takedown notice pursuant to section 512(c)(3) of
21 the Digital Millennium Copyright Act ("DMCA"). 17 U.S.C. § 512(c)(3). On October 2, 2008,
22 YouTube disabled access to the Video and notified Brave New Films that the Video had been
23 removed pursuant to the complaint by OTRN. Attached hereto as Exhibit C is a true and correct
24 copy of YouTube's notification to Brave New Films.

25 7. On October 10, 2008, Brave New Films filed a complaint for injunctive relief and
26 damages against OTRN and Savage alleging they had issued an improper takedown notice
27 pursuant to the DMCA. Attached hereto as Exhibit D is a true and correct copy of the Complaint
28

1 filed in the matter *Brave New Films 501(c)(4) v. Weiner et al.*, No. 3:08-cv-04703-JL (N.D. Cal.
2 Oct. 10, 2008) (Document No. 1).

3 8. Magistrate Judge James Larson was assigned to the matter. Attached hereto as
4 Exhibit E is a true and correct copy of Order Setting Initial Case Management Conference and
5 ADR Deadlines, *Brave New Films 501(c)(4) v. Weiner et al.*, No. 3:08-cv-04703-JL (N.D. Cal.
6 Oct. 10, 2008) (Document No. 4).

7 9. I declare under penalty of perjury under the laws of the United States of America
8 and the State of California that the foregoing is true and correct.

9
10 DATED: November 4, 2008

11
12 By: Sheila M. Pierce
Sheila M. Pierce